

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
FM Table of Allotments,
For FM Broadcast Stations

(Lancaster and Pickerington, Ohio)

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MB Docket No. 03-238
RM-10820

RECEIVED

To Secretary, to forward to:

JAN 30 2004

Assistant Chief (Allocations), Audio Division

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

North American Broadcasting Co., Inc. ("North American"), the licensee of WEGE(FM), Westerville, Ohio (Facility ID No. 60099), by its attorneys, hereby respectfully submits these reply comments in connection with the *Notice of Proposed Rule Making*, DA 03-238, released November 17, 2003, in the above-captioned docket (the "*NPRM*").

The *NPRM* proposes the reallocation of Channel 278A from Lancaster, Ohio, to Pickerington, Ohio, to serve as Pickerington's first local transmission service, and proposes to modify the license issued to Franklin Communications, Inc. ("Franklin") for Station WJZA(FM) to specify operation at Pickerington instead of Lancaster. Franklin filed Comments in support of the *NPRM* on the comment deadline of January 15, 2004.

North American filed on January 8, 2004, an application on FCC Form 301 for a construction permit for a minor change in the licensed facilities of WEGE(FM), FCC File No. BPH-20040108ALM (the "WEGE Permit Application"). The WEGE Permit Application was accepted by the Commission on January 12, 2004. As noted in the WEGE Permit Application,

the proposed WEGE facility does not meet the minimum spacing requirements of Section 73.207 of the Commission's Rules to the allotment coordinates specified in the *NPRM* for the proposed Pickerington allotment. See WEGE Permit Application at Exhibit 24 – Statement A. The WEGE Permit Application notes that it *would* be fully spaced to the Pickerington allotment if the allotment coordinates were changed to 39°55'42" N, 82°38'42" W (the "Alternate Reference Coordinates"). See *id.* ^{1/} As set forth in the Engineering Statement attached hereto, a station operating on Channel 278A from the Alternate Reference Coordinates would place the requisite 70 dBu contour over the entire community of Pickerington and would comply with the Commission's minimum spacing requirements. ^{2/}

Commission procedures provide that a permit application filed on or before the comment deadline in a proposed rule making proceeding automatically will be treated as a counterproposal in such proceeding. ^{3/} Consequently, the WEGE Permit Application, which was

^{1/} The WEGE Permit Application also notes that while it is not fully spaced to the Class C license of WPAY-FM, Portsmouth, Ohio, it is fully spaced to the granted construction permit for WPAY-FM, as well as to WPAY-FM as reclassified to Class C0 (WPAY-FM is the subject of a reclassification proceeding), and requested, to the extent necessary, waivers of Sections 73.207(b) and 73.3517 of the Commission's Rules.

^{2/} The attached Engineering Statement also includes a gain and loss study which establishes that, from the Alternate Reference Coordinates, there would be a net gain in 60 dBu service over that currently provided by Station WJZA(FM) of 82,972 persons and a slight loss of 11 square kilometers. Both the gain and loss areas from the Alternate Reference Coordinates are well-served (that is, receive a minimum of five aural services).

^{3/} See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992) ("*Conflicts*"), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993) ("*Conflicts Recon Order*"); see, e.g., *Oklahoma, and Gainesville, Texas*, 18 FCC Rcd 7076 (Ass't Chief, Audio Div. 2003) (permit application that is mutually exclusive with allotment proposal and which was filed after petition for rule making but prior to the close of the initial comment period is considered a timely counterproposal in the allotment proceeding)

filed before the comment deadline in this proceeding, and which conflicts with the allotment coordinates set forth in the *NPRM*, must be considered as a counterproposal in this docket.

Nevertheless, the Commission need not select one or the other of these proposals, as both may be accommodated. Over a decade ago, the Commission established that, in cases in which a proposed allotment conflicts with a construction permit application, the Commission will do whatever it can to grant both requests. ^{4/} Under the policy expressly adopted in the *Conflicts* proceeding, the Commission “will attempt prior to dismissing a rule making petition to resolve any conflict between that petition and a previously cut-off FM application by imposing a site restriction on the rulemaking petition. The staff will also attempt to resolve conflicts between a rulemaking petition and a later-filed FM application by imposing a site restriction on the proposal in the petition, or by allotting an alternate channel for that proposed in the petition, whenever it is possible to do so without prejudice to a timely filed FM application or rulemaking petition.” ^{5/} The Commission repeatedly has put the *Conflicts* policy into practice by specifying alternative allotment reference coordinates from which adequate community coverage is provided in order to permit the grant of both the allotment proposal and the permit application. ^{6/}

^{4/} See *Conflicts and Conflicts Recon Order*, *supra* note 3.

^{5/} See *Conflicts Recon Order* at n 12.

^{6/} See e.g., *McCook, Alliance, Imperial, Nebraska and Limon, Parker, Aspen, Avon, and Westcliffe, Colorado*, DA 01-1081 at ¶9 (Chief, Allocations Branch, rel. Apr. 27, 2001) (specifying site restriction for allotment “to avoid a short-spacing to ... the pending application of Station KRNY”), *Warrenton, Georgia*, 6 FCC Rcd 5174 at ¶ 3 (Ass’t Chief, Allocations Branch 1991) (“Therefore, we believe that the allotment of Channel 226C3 to Warrenton at the alternate coordinates, with a site restriction of 18.4 kilometers (11.5 miles) west of the city, is warranted. The site restriction will avoid a short-spacing to the application for Station WEAS(FM), Channel 226C1, Savannah, Georgia.”); *Saltillo, Virginia and Jefferson, North Carolina*, 10 FCC Rcd 7578 (Chief, Allocations Branch 1995) (“Subsequently, the Commission’s staff found an alternate site to accommodate petitioner’s proposal while protecting the coordinates specified in Murray’s construction permit. This change is consistent with

In this proceeding, provided the Alternate Reference Coordinates are specified for the Pickerington allotment, both that allotment and the WEGE Permit Application can be accommodated. Consequently, if the Commission deems the *NPRM* proposal to serve the public interest, according to its *Conflicts* policy, it must specify a site restriction on the Pickerington allotment to protect the WEGE Permit Application.

As set forth in the attached Engineering Statement, the proposed reallocation of Channel 278A to Pickerington at the Alternate Reference Coordinates would result in a net increase in service by Station WJZA of 82,972 persons, and assuming *arguendo* that the petitioner satisfies the Commission's criteria establishing that Pickerington is deserving of an allotment, would provide a first local transmission service for Pickerington. To the extent that a Channel 278A operation from the Alternate Reference Coordinates would result in a lesser population gain than from the reference coordinates suggested by the petitioner, that difference is more than outweighed by the net increase in population served (530,223 persons) that would result from the grant and implementation of the WEGE Permit Application. ^{7/} Hence, the public interest would best be served by the accommodation of both proposals.

Commission new policy to attempt, where possible, to eliminate conflicts between coordinates specified by parties. We do not believe that this is unduly burdensome to petitioner since it has proposed a change of transmitter site in its rulemaking petition").

^{7/} In addition, as noted in the Engineering Statement, implementation of the WEGE Permit Application will further serve the public interest by alleviating a long standing Section 73.213(c)(1) grandfathered short-spacing with respect to WCKY-FM, Ch 278B at Tiffin, Ohio.

For the foregoing reasons, if the Commission concludes that its should adopt the proposal to reallocate Channel 278A from Lancaster to Pickerington, Ohio, such reallocation should be based on the Alternate Reference Coordinates and include the appropriate site restriction, so that the WEGE Permit Application *and* the proposed Pickerington reallocation may both proceed

Respectfully submitted,

**NORTH AMERICAN BROADCASTING
CO., INC.**

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Its Attorneys

January 30, 2004

ENGINEERING STATEMENT

Engineering Statement
in support of
Reply Comments
prepared for
North American Broadcasting Co., Inc.

This statement has been prepared on behalf of *North American Broadcasting Co., Inc* ("*North American*") licensee of radio station WEGE (Ch 280A, Westerville, Ohio, Facility Id 60099) in support of Reply Comments filed in the Notice of Proposed Rulemaking ("NPRM")¹ proceeding for Ch 278A allotment at Pickerington, Ohio. To the extent that the Commission adopts the allotment of Ch 278A at Pickerington, *North American* notes that such allotment should be based on the alternate reference coordinates noted in the Application for Construction Permit (file number BPH-20040108ALM) for WEGE.

The attached **Figure 1** demonstrates that a maximum Class A facility located at the alternate reference coordinates will provide a 70 dBμ contour (assuming uniform terrain) that completely encompasses the community of Pickerington, Ohio, thus complying with Section 73.315(a) of the Rules. The following allocation study shows that the alternate reference coordinates (39°55'42" N, 82°38'42" W) are fully spaced to all pertinent facilities, including the WEGE pending application.

REFERENCE				CLASS = A				DISPLAY DATES					
39 55 42 N								DATA 01-30-04					
82 38 42 W				Current Spacings				SEARCH 01-30-04					
----- Channel 278 - 103.5 MHz -----													
Call		Channel		Location		Dist		Azi		FCC		Margin	

RDEL		DEL	278A	Lancaster		OH	7 11	175.6	115.0			-107 89	
WJZA		LIC	278A	Lancaster		OH	7 11	175.6	115.0			-107 89	
WEGE A		APP	280A	Westerville		OH	31 47	305 0	31 0			0.47	
WOGH		LIC	278B	Burgettstown		PA	178 55	74 4	178 0			0 55	
WOGH.C		CP	278B	Burgettstown		PA	178 56	74.4	178 0			0 56	
WSMZ		LIC	276A	Johnstown		OH	33 39	358.0	31.0			2 39	
WGRR		LIC	278B	Hamilton		OH	180 48	243 9	178.0			2.48	
ALLO		VAC	279A	McConnelsville		OH	75 30	114 4	72 0			3.30	
WEGE C		CP	280A	Westerville		OH	34.93	317 4	31 0			3.93	
WEGE		LIC	280A	Westerville		OH	34.93	317.4	31 0			3 93	
WCKYFM		LIC	279B	Tiffin		OH	143 74	339.5	113 0			30 74	
WDHT		LIC	275B	Springfield		OH	104 62	271.9	69.0			35 62	
WPAYFM		LIC	281C	Portsmouth		OH	137.38	193.0	95.0			42.38	
WCVZ		LIC	224B1	South Zanesville		OH	54 70	115 6	12 0			42 70	

¹ In the Matter of Amendment of Section 73.202(b), FM Table of Allotments For FM Broadcast Stations (Lancaster and Pickerington, Ohio, Notice of Proposed Rulemaking, MB Docket No. 03-238, RM-10820, (Released November 17, 2003).

Engineering Statement

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The licensed WJZA facility covers 480,073 persons with a 60 dB μ coverage contour over an area of 2,527 sq. km. A maximum Class A facility located at the alternate reference coordinates will provide service to 563,045 persons (assuming uniform terrain) over an area of 2,516 sq. km. This includes 121,510 additional persons who do not currently receive service from WJZA while 38,538 persons would lose their current 60 dB μ coverage of WJZA. This is a net increase of some 82,972 persons and only a slight decrease in coverage area (11 sq. km). Those persons predicted to lose the coverage from WJZA will continue to be served by 5 or more audio services. When compared to the NPRM, the coverage from the alternate reference coordinates results in coverage of 197,165 less people than the facility proposed in the NPRM. Since the calculated coverage for both the NPRM facility and the alternate facility are circles of 28.3 km radius, there is no net difference in the area covered by these two facilities.

By comparison, the recently filed application for WEGE results in a substantial increase in the population served. The presently licensed facility of WEGE covers 687,395 persons with its 60 dB μ contour over an area of 1,943 sq. km. The 60 dB μ contour of the facility proposed in BPH-20040108ALM will encompass 1,217,618 persons over an area of 2,476 sq. km. An additional 549,871 persons will receive coverage from WEGE as a result of this proposal while only 19,648 persons are predicted to lose their present WEGE service. This is a net increase of 530,223 persons covered by the proposed WEGE facility or a 77% increase in population and a 27% increase in 60 dB μ contour coverage area over the licensed WEGE facility.

Further, the proposed WEGE facility also alleviates a long standing, Section 73.213(c)(1) grandfathered short-spacing with respect to WCKY-FM, Ch 27.8B at Tiffin, Ohio. The proposed WEGE location is fully spaced to WCKY-FM under Section 73.207(b), resulting in the ability of WEGE to increase its effective radiated power ("ERP") toward WCKY-FM from a grandfathered 3 kilowatt equivalent ERP to the full 6 kilowatt ERP allowed under the Rules.

As demonstrated herein both the improved WEGE facility and a new allotment at Pickerington, Ohio can coexist. While the alternate reference coordinates represent a theoretical reduction in population compared to the NPRM facility, allowing both facilities to coexist will result

Engineering Statement

(Page 3 of 3)

by the proposed WEGE facility. Acceptance of these alternate reference coordinates for Ch 278A at Pickerington, Ohio is clearly in the public interest since both WEGE and WJZA would provide an increased service over their presently licensed facilities

A handwritten signature in black ink, appearing to read "Michael D. Rhodes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael D. Rhodes, P.E.

January 30, 2004

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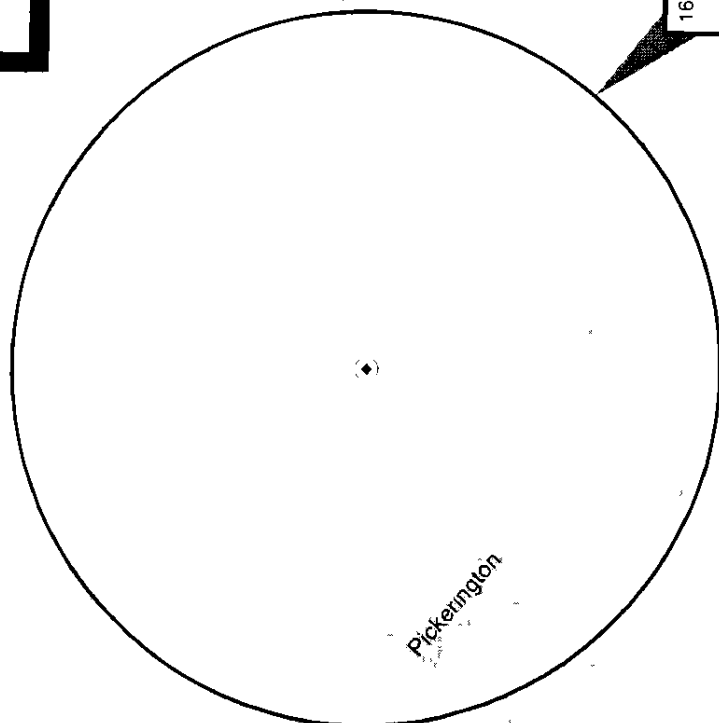
FIGURE 1

COVERAGE OF PICKERINGTON, OHIO

prepared January 2004 for

North American Broadcasting Co., Inc

Cavell, Merritt & Davis Inc.
Manassas, Virginia



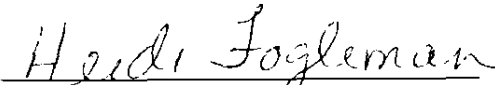
Certificate of Service

I, Heidi Fogleman, hereby certify that on this 30th day of January, 2004, a copy of the foregoing Reply Comments was sent by first-class mail, postage prepaid, to.

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